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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

YELLOWCAKE, INC., California
corporation,

Plaintiff,

v.

HYPHY MUSIC, INC.,

Defendant.

Case No.: 1:20-cv-00988-JLT-BAM

[Assigned to the Hon. Jennifer L. Thurston]
**HYPHY MUSIC, INC.'S OBJECTIONS
TO YELLOWCAKE, INC. AND
COLONIZE MEDIA INC.'S EVIDENCE
PROFFERED IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT**

HYPHY MUSIC, INC.,

Counterclaimant,

v.

YELLOWCAKE, INC.; COLONIZE
MEDIA, INC; JOSE DAVID
HERNANDEZ; and JESUS
CHAVEZ SR,

Counter-Defendants.

Date: September 29, 2023
Time: 9:00 a.m.
Dept.: Courtroom 4 (7th Floor)
2500 Tulare Street
Fresno, CA 93721
Judge: Hon. Jennifer L. Thurston

**HYPHY MUSIC'S OBJECTIONS TO YELLOWCAKE AND COLONIZE
MEDIA'S EVIDENCE PROFFERED IN SUPPORT OF THEIR MOTION FOR
SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure (“*FRCP*”) 56(c)(2), Defendant/Counterclaimant Hyphy Music, Inc. (“*Hyphy*”) hereby objects to the following evidence presented by Plaintiff Yellowcake, Inc. (“*Yellowcake*”) and Counter-Defendants Yellowcake and Colonize Media, Inc. (“*Colonize*”) (collectively, “*Counter-Defendants*”), in connection with the Motion for Summary Judgment filed by Counter-Defendants (the “*Motion*”) and set to be heard before this Court. Counter-Defendants have submitted two (2) declarations that make a number of conclusory allegations unsupported by facts, and which are therefore insufficient to create a genuine issue of material fact. *Hansen v. U.S.*, 7 F.3d 137, 138 (9th Cir. 1993). A more specific detailing of the deficiencies in both declarations is as follows:

DECLARATION OF KEVIN BERGER

1. Declaration of Kevin Berger, ¶ 4, 2:22-25

Hyphy objects to the statement from Kevin Berger (“*Berger*”) that “[a]mong the musical acts with whom Yellowcake has acquired an intellectual property right(s) is Jesus Chavez Sr. (“Chavez”), and the statement that “Chavez is a legend in the Mexican music genre who performs with backing musicians under the name Los Originales de San Juan (the “Band”)” on the grounds that both such statements are conclusory. *Hansen*, 7 F.3d at 138.

2. Declaration of Kevin Berger, ¶ 5, 2:26-3:1

Hyphy objects to the statement from Berger that “Yellowcake’s attorneys advise me that Hyphy Music, Inc. has acknowledged in their filings in this lawsuit that Chavez was the founder, owner and principal of the Band, and that Hyphy previously obtained their former rights to distributed the Albums at issue in this lawsuit directly from Chavez and Chavez alone” on the grounds that such statement is conclusory. *Hansen*, 7 F.3d at 138. Additionally, to the extent Berger gained

1 knowledge of facts purportedly underlying such assertion from others, such facts
2 also constitute inadmissible hearsay. Federal Rule of Evidence (“*FRE*”) 802.

3 **3. Declaration of Kevin Berger, ¶ 8, 3:11-14**

4 Hyphy objects to the statement from Berger that “[w]hile negotiating the
5 terms of any such acquisition of Chavez’s and the Band’s intellectual property
6 rights, including in the Albums, Yellowcake did its ‘due diligence’ to determine
7 what, if any, copyright registrations already existed for the Albums” on the grounds
8 that such statement is conclusory. *Hansen*, 7 F.3d at 138.

9 **4. Declaration of Kevin Berger, ¶ 9, 3:15-17**

10 Hyphy objects to the statement from Berger that “[u]pon Yellowcake’s search
11 of the United States Copyright Office, Yellowcake determined that no other
12 individual or entity filed any documentation with the Copyright Office to assert an
13 ownership claim in the Albums” on the grounds that such statement is conclusory.
14 *Hansen v. U.S.*, 7 F.3d 137, 138 (9th Cir. 1993).

15 **5. Declaration of Kevin Berger, ¶ 10, 3:18-22**

16 Hyphy objects to the statement from Berger that “[o]n or about March 21,
17 2019, Yellowcake and Chavez entered into an Asset Purchase and Assignment
18 Agreement (hereinafter referred to as the “APA Agreement”), whereby Yellowcake
19 purchased Chavez’s entire ownership of the rights, title and interest in Chavez’s
20 catalog of sound recordings, including the Albums for five hundred thousand dollars
21 (\$500,000.00) and free and clear of all encumbrances” on the grounds that such
22 statement is conclusory. *Hansen*, 7 F.3d at 138.

23 **6. Declaration of Kevin Berger, ¶ 12, 3:25-28**

24 Hyphy objects to the statement from Berger that “[f]ollowing the APA
25 Agreement, Yellowcake complied with all requirements set forth by the Copyright
26 Act, 17 U.S.C. § 101, *et seq.*, by registering copyrights for each Album acquired by
27 the APA Agreement and recorded the written assignment with the United States
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Copyright Office” on the grounds that that such statement is conclusory. *Hansen*, 7 F.3d at 138.

7. Declaration of Kevin Berger, ¶ 13, 4:1-2

Hyphy objects to the statement from Berger that “[t]he United States Copyright Office issued Plaintiff a Certificate of Registration for each copyrighted Album” on the grounds that that such statement is conclusory. *Hansen*, 7 F.3d at 138.

8. Declaration of Kevin Berger, ¶ 14, 4:3-5

Hyphy objects to the statement from Berger that “[o]nce Yellowcake acquired the rights in the Albums, they were distributed through Colonize Media Inc. (“Colonize”), a digital music distributor that Yellowcake uses to distribute many of the sound recordings in its catalog” to the extent that such a statement suggests a level of legal separation between Colonize and Yellowcake that is contradicted by Hernandez’s deposition testimony establishing, in reality, that Colonize was nothing more than Yellowcake’s wholly owned and controlled “distribution arm” used for the purpose of helping Yellowcake avoid liability for distribution of works it acquired. *Kennedy v. Allred Mutual Ins.*, 952 F.2d 262, 266 (9th Cir. 1991). This is the case because Hernandez testified in his deposition (“*Hernandez Depo*”) that Colonize is commonly owned by Yellowcake, shares common business operations, office space, staff, and other resources, and distributes Yellowcake’s music for free. *Hernandez Depo* at 79:7-80:20. Defendants also object to such statement because it is conclusory. *Hansen*, 7 F.3d at 138.

9. Declaration of Kevin Berger, ¶ 16, 4:10-15

Hyphy objects to the statement from Berger that “[a]fter the APA Agreement had been executed and the United States Copyright Office issued Certificates of Registration for each Album, Hyphy Music engaged in the exploitation of Yellowcake’s copyrighted Albums in direct violation of Yellowcake’s exclusive

rights provided by 17 U.S.C. § 106 by selling, reproducing, synchronizing, distributing, and publicly performing the Albums on various digital service provider platforms” on the grounds that such statement because it is conclusory. *Hansen*, 7 F.3d at 138.

10. Declaration of Kevin Berger, ¶ 18, 4:19-21

Hyphy objects to the statement from Berger that “[i]n or about June 2020, Yellowcake was notified by Colonize that it discovered that ‘conflicts’ had arisen on a number of digital service provider platforms because Hyphy was distributing the Albums purchased by Yellowcake” on the grounds that such statement is conclusory. *Hansen*, 7 F.3d at 138.

11. Declaration of Kevin Berger, ¶ 19, 4:22-24

Hyphy objects to the statement from Berger that “[a]s a result of these conflicts, Yellowcake sent ‘Takedown Notices’ to YouTube pursuant to YouTube’s internal protocols and in compliance with 17. U.S.C. § 512 *et seq.* to assert is ownership rights in the Albums” on the grounds that such statement is conclusory. *Hansen*, 7 F.3d at 138.

12. Declaration of Kevin Berger, ¶ 20, 4:25-28

Hyphy objects to the statement from Berger that “[n]otwithstanding the fact that Yellowcake sent the ‘Takedown Notices,’ Hyphy continued to unlawfully sell the Albums through multiple digital service providers. A true and correct copy of the notice of infringement sent by Yellowcake to Hyphy’s distributor, The Orchard, is attached to the Berman Declaration” on the grounds that such statement is conclusory. *Hansen*, 7 F.3d at 138.

13. Declaration of Kevin Berger, ¶ 21, 5:1-4

Hyphy objects to the statement from Berger that “[i]t is my understanding that Hyphy never brought a declaratory judgment or any other actions claiming ownership of the Albums, did not attempt to file copyright registrations in the

1 Albums until after Yellowcake filed this action, and made no other claim of
2 ownership of the Albums until Yellowcake sued Hyphy in this action” on the
3 grounds that such statement is conclusory. *Hansen*, 7 F.3d at 138. Defendants also
4 object because Berger has not stated facts in his Declaration establishing that he has
5 the personal knowledge necessary to make this statement. FRE 602. Additionally, to
6 the extent Berger gained knowledge of facts purportedly underlying such assertion
7 from others, such facts would also constitute inadmissible hearsay. FRE 802.

8 **14. Declaration of Kevin Berger, ¶ 22, 5:5-8**

9 Hyphy objects to the statement from Berger that “[i]t is my understanding that
10 Hyphy Music has generated significant revenue from its willful infringement of the
11 Albums and continues to benefit from said unauthorized exploitations to
12 Yellowcake’s detriment and that Yellowcake is entitled to disgorge \$120,000 in
13 profits from Hyphy” on the grounds that such statement is conclusory. *Hansen*, 7
14 F.3d at 138. Defendants also object because Berger has not stated facts in his
15 Declaration establishing that he has the personal knowledge necessary to make these
16 statements. FRE 602. Additionally, to the extent Berger gained knowledge of facts
17 purportedly underlying such assertions from others, such facts would also constitute
18 inadmissible hearsay. FRE 802.

19 **15. Declaration of Kevin Berger, ¶ 23, 5:9-10**

20 Hyphy objects to the statement from Berger that “[a]s such, it is my
21 understanding that Yellowcake is entitled to disgorge these amounts from Hyphy as
22 well as Yellowcake’s lost profits” on the grounds that such statement is conclusory.
23 *Hansen*, 7 F.3d at 138. Additionally, to the extent Berger gained knowledge of facts
24 purportedly underlying such assertion from others, such facts would also constitute
25 inadmissible hearsay. FRE 802.

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1 **16. Declaration of Kevin Berger, ¶ 24, 5:11-14**

2 Hyphy objects to the statement from Berger that “[f]urthermore, it is my
3 understanding that Hyphy is not a co-owner of the Albums as set forth in the
4 accompanying Memorandum of Points and Authorities and that any such claim by
5 Hyphy does not prevent Yellowcake from being entitled to summary judgment” on
6 the grounds that such statement is conclusory. *Hansen*, 7 F.3d at 138. Additionally,
7 to the extent Berger gained knowledge of facts purportedly underlying such
8 assertion from others, such facts would also constitute inadmissible hearsay. FRE
9 802.

10 **17. Declaration of Kevin Berger, ¶ 26, 5:19-23**

11 Hyphy objects to the statement from Berger that “[n]othing could be further
12 from the truth. Yellowcake never used Hyphy’s artwork. Yellowcake created its
13 own new Album covers after it acquired the sound recordings of the Albums from
14 Chavez. Attached hereto as **Exhibit “A”** is a true and correct comparison of
15 Hyphy’s artwork and Yellowcake’s artwork for five of the Albums. As the Court
16 can see, the album covers are completely different” on the grounds that such
17 statement is conclusory. *Hansen*, 7 F.3d at 138. Additionally, to the extent Berger
18 gained knowledge of facts purportedly underlying such assertion from others, such
19 facts would also constitute inadmissible hearsay. FRE 802.

20 **18. Declaration of Kevin Berger, ¶ 27, 5:24-26**

21 Hyphy objects to the statement from Berger that “[i]t is my understanding that
22 Hyphy is supporting its allegation by maintaining that Yellowcake and Colonize
23 distributed copies of the Albums using Hyphy’s artwork on an online music store
24 named Daddy Kool Records” on the grounds that such statement is conclusory.
25 *Hansen*, 7 F.3d at 138. Additionally, to the extent Berger gained knowledge of facts
26 purportedly underlying such assertion from others, such facts would also constitute
27 inadmissible hearsay. FRE 802.

1 **19. Declaration of Kevin Berger, ¶ 28, 5:27-6:1**

2 Hyphy objects to the statement from Berger that “[h]owever, Daddy Kool
3 Records has never been a retail client of Yellowcake's and Yellowcake never sold
4 any sound recordings it owns through Daddy Kool Records, let alone the Albums at
5 issue in this lawsuit” on the grounds that such statement is conclusory. *Hansen*, 7
6 F.3d at 138. Defendants also object because Berger has not stated facts in his
7 Declaration establishing that he has the personal knowledge necessary to make this
8 statement. FRE 602.

9 **20. Declaration of Kevin Berger, ¶ 29, 6:2-4**

10 Hyphy objects to the statement from Berger that “[i]n addition, I have
11 reviewed the Daddy Kool Records website screenshots relied on by Hyphy, and they
12 do not mention or identify either Yellowcake or Colonize in any way” on the grounds
13 that such statement is conclusory. *Hansen*, 7 F.3d at 138.

14 **21. Declaration of Kevin Berger, ¶ 30, 6:5-13**

15 Hyphy objects to the statement from Berger that “[i]n fact, after I became
16 aware of the allegation that Yellowcake had allegedly used Hyphy’s artwork on
17 Daddy Kool Records, Yellowcake and Colonize investigated the allegation. Not
18 only did I confirm that Yellowcake did not upload or distribute the Los Originales
19 albums using Hyphy’s artwork to Daddy Kool Records, I also confirmed that
20 Yellowcake has never distributed anything to Daddy Kool Records at all.
21 *Yellowcake also discovered that in fact it was Hyphy Music, in corroboration with*
22 *Morena Music, Inc. doing business as Long Play Music, Inc., who uploaded the*
23 *albums to Daddy Kool Records and is now attempting to pass off such acts as being*
24 *attributed to Yellowcake”* on the grounds that such statement is conclusory. *Hansen*,
25 7 F.3d at 138. Defendants also object because Berger has not stated facts in his
26 Declaration establishing that he has the personal knowledge necessary to make this
27 statement. FRE 602. Additionally, to the extent Berger gained knowledge of facts
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1 purportedly underlying such assertion from others, such facts would also constitute
2 inadmissible hearsay. FRE 802.

3 **22. Declaration of Kevin Berger, ¶ 31, 6:14-15**

4 Hyphy objects to the statement from Berger that “Colonize found that Daddy
5 Kool Records received the Albums, with Hyphy’s artwork, from Morena, through
6 Hyphy and Morena’s distributor, The Orchard” on the grounds that such statement
7 is conclusory. *Hansen*, 7 F.3d at 138. Defendants also object because Berger has not
8 stated facts in his Declaration establishing that he has the personal knowledge
9 necessary to make this statement. FRE 602. Additionally, to the extent Berger
10 gained knowledge of facts purportedly underlying such assertion from others, such
11 facts would also constitute inadmissible hearsay. FRE 802.

12 **23. Declaration of Kevin Berger, ¶ 32, 6:16-21**

13 Hyphy objects to the statement from Berger that “[f]urthermore, it is my
14 understanding that Hyphy did not produce these alleged screenshots of the album
15 artwork until October 2022, almost two years after the commencement of litigation
16 and only on the eve of the first deadline to file summary judgment motions which
17 supports the inference that Hyphy manufactured this “evidence” which is consistent
18 with Hyphy’s history of manufacturing evidence such as the alleged assignment
19 agreements from Chavez’s former backing musicians” on the grounds that such
20 statement is conclusory. *Hansen*, 7 F.3d at 138. Additionally, to the extent Berger
21 gained knowledge of facts purportedly underlying such assertion from others, such
22 facts would also constitute inadmissible hearsay. FRE 802.

23 **24. Declaration of Kevin Berger, ¶ 33, 6:22-25**

24 Hyphy objects to the statement from Berger that “Yellowcake’s attorneys
25 advised me that Hyphy’s alleged evidence is unsubstantiated, lacks a foundation,
26 and makes no mention of Yellowcake anywhere. Hyphy’s attempt to pass the
27 screenshots off as evidence of Yellowcake’s acts when it was uploaded by Morena

1 is a fraud on the Court” on the grounds that such statement is conclusory. *Hansen*, 7
2 F.3d at 138. Additionally, to the extent Berger gained knowledge of facts
3 purportedly underlying such assertion from others, such facts would also constitute
4 inadmissible hearsay. FRE 802.

5 **25. Declaration of Kevin Berger, ¶ 34, 6:26-7:1**

6 Hyphy objects to the statement from Berger that “[a]ccordingly,
7 Yellowcake’s attorneys advise me that Yellowcake is entitled to summary judgment
8 in its favor on its first cause of action for copyright infringement and to summary
9 judgment with regards to Hyphy’s second cause of action for copyright infringement
10 related to the album artwork” on the grounds that such statement is conclusory.
11 *Hansen*, 7 F.3d at 138. Additionally, to the extent Berger gained knowledge of facts
12 purportedly underlying such assertion from others, such facts would also constitute
13 inadmissible hearsay. FRE 802.

14 **26. Declaration of Kevin Berger, ¶ 35, 7:2-12**

15 Hyphy objects to the statement from Berger that “[f]or all of the foregoing
16 reasons, it is respectfully requested that this Court: (i) grant Yellowcake’s Motion
17 for Summary Judgment pursuant to Federal Rule of Civil Procedure 56 on its first
18 cause of action for copyright infringement against Hyphy; (ii) grant Yellowcake and
19 Colonize’s Motion for Summary Judgment pursuant to Federal Rule of Civil
20 Procedure 56 on Hyphy’s second cause of action for copyright infringement; (iii)
21 issue a judgment holding that Hyphy is liable to Yellowcake for damages in the
22 amount of 120,000; (iv) issue a permanent injunction pursuant to 17 U.S.C. § 502
23 prohibiting Hyphy, Martinez, or any of their employees or agents from exercising
24 any of the rights provided by 17 U.S.C. § 106 with regards to the Albums; and (v)
25 such other and further relief as the Court may deem just and proper” on the grounds
26 that such statement is conclusory. *Hansen*, 7 F.3d at 138.

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1 **DECLARATION OF JOSE DAVID HERNANDEZ**

2 **1. Declaration of Jose David Hernandez, ¶ 3, 2:20-23**

3 Hyphy objects to the statement from Hernandez that “Colonize is a global
4 leader in the business of digital music distribution and monetization” because the
5 probative value of this statement is substantially outweighed by the danger of unfair
6 prejudice to Defendants from the unnecessary, and factually inaccurate, positive
7 connotation it implies of Colonize. Federal Rule of Evidence (“*FRE*”) 403. To the
8 extent Hernandez gained knowledge of facts purportedly underlying such assertion
9 from others, such facts would also constitute inadmissible hearsay. FRE 802.

10 **2. Declaration of Jose David Hernandez, ¶ 5, 3:1-2**

11 Hyphy objects to the statement from Hernandez that “[o]ne of Colonize’s
12 clients, on whose behalf we distribute sound records is Yellowcake, Inc.” to the
13 extent that such a statement suggests a level of legal separation between Colonize
14 and Yellowcake that is contradicted by Hernandez’s deposition testimony
15 establishing, in reality, that Colonize was nothing more than Yellowcake’s wholly
16 owned and controlled “distribution arm” used for the purpose of helping
17 Yellowcake avoid liability for distribution of works it acquired. *Kennedy*, 952 F.2d
18 266. This is the case because Hernandez testified in his deposition that Colonize is
19 commonly owned by Yellowcake, shares common business operations, office space,
20 staff, and other resources, and distributes Yellowcake’s music for free. Hernandez
21 Depo at 79:7-80:20. Defendants also object to such statement because it is
22 conclusory. *Hansen*, 7 F.3d at 138.

23 **3. Declaration of Jose David Hernandez, ¶ 7, 3:6-13**

24 Hyphy objects to the statement from Hernandez that “[i]t is my understanding
25 that in about March 2019, Jesus Chavez, Sr., sold the entirety of the rights, title and
26 interest in the copyrights of the sound recordings of six Albums by his band, Los
27 Originales de San Juan: (i) *Los Originales de San Juan- El Campesino*; (ii) *Los*

1 *Originales de San Juan-Corridos de Poca M*; (iii) *Los Originales de San Juan-En*
2 *Vivo Desde La Cantina de Mi Barrio*; (iv) *Los Originales de San Juan-Nuestra*
3 *Historia En Vivo*; (v) *Los Originales de San Juan- Amigos y Contrarios*; and (vi)
4 *Los Originales de San Juan-Naci Con Suerte de Rey Con Mariachi* (hereinafter the
5 “Albums”) to Yellowcake pursuant to a written agreement” on the grounds that such
6 statement is conclusory. *Hansen*, 7 F.3d at 138. Additionally, to the extent
7 Hernandez gained knowledge of facts purportedly underlying the above assertion
8 from others, such facts such facts would also constitute inadmissible hearsay. FRE
9 802.

10 **4. Declaration of Jose David Hernandez, ¶ 9, 3:16-18**

11 Hyphy objects to the statement from Hernandez that “[i]n or about June 2020,
12 Colonize discovered conflicts with certain sound recordings on the Albums being
13 exploited by Hyphy and notified Yellowcake of such conflicts” because the claimed
14 date of discovery of Morena’s original exploitation of the Albums is contradicted by
15 Hernandez’ deposition testimony establishing Hernandez’s (and therefore
16 Yellowcake’s and Colonize’s) prior knowledge of the Group and its distribution of
17 albums through record labels like Morena. *Kennedy*, 952 F.2d 266. This is the case
18 because Hernandez testified in his deposition that Hernandez has known of Chavez
19 Sr. and Los Originales San De San Juan since he was a kid, and has been working
20 with him and the Band since 2016. Hernandez Depo at 134:2-19. Defendants also
21 object to such statement because it is conclusory. *Hansen*, 7 F.3d at 138.

22 **5. Declaration of Jose David Hernandez, ¶ 10, 3:19-22**

23 Hyphy objects to the statement from Hernandez that “[f]urthermore, it is my
24 understanding that Hyphy has asserted a claim of copyright infringement against
25 Colonize and Yellowcake alleging that Yellowcake used Hyphy’s allegedly
26 copyrighted artwork created for the Albums when it previously distributed the
27 Albums” on the grounds that such statement is conclusory. *Hansen*, 7 F.3d at 138.

1 **6. Declaration of Jose David Hernandez, ¶ 11, 3:23-26**

2 Hyphy objects to the statement from Hernandez that “[n]othing could be
3 further from the truth. It is my understanding that Yellowcake never used Hyphy’s
4 artwork and that created its own new Album covers after it acquired the sound
5 recordings of the Albums from Chavez. Colonize never distributed the Albums
6 using Hyphy’s artwork” on the grounds that such statement is conclusory. *Hansen*, 7
7 F.3d at 138. Additionally, to the extent Hernandez gained knowledge of facts
8 purportedly underlying such assertion from others, such facts would also constitute
9 inadmissible hearsay. FRE 802.

10 **7. Declaration of Jose David Hernandez, ¶ 12, 3:27-4:1**

11 Hyphy objects to the statement from Hernandez that “[i]t is my understanding
12 that Hyphy is supporting its allegation maintaining that Yellowcake and Colonize
13 have distributed copies of the Albums using Hyphy’s artwork on an online music
14 store named Daddy Kool Records” on the grounds that such statement is conclusory.
15 *Hansen*, 7 F.3d at 138. Additionally, to the extent Hernandez gained knowledge of
16 facts purportedly underlying such assertion from others, such facts would also
17 constitute inadmissible hearsay. FRE 802.

18 **8. Declaration of Jose David Hernandez, ¶ 13, 4:2-4**

19 Hyphy objects to the statement from Hernandez that “[h]owever, Daddy Kool
20 Records has never been an account of or associated with Colonize, and Colonize has
21 never distributed any sound recordings through Daddy Kool Records, let alone the
22 Albums with Hyphy’s artwork” on the grounds that such statement is conclusory.
23 *Hansen*, 7 F.3d at 138.

24 **9. Declaration of Jose David Hernandez, ¶ 14, 4:5-6**

25 Hyphy objects to the statement from Hernandez that “*I have reviewed the*
26 *alleged screenshots relied on by Hyphy and the screenshots do not mention or*
27

1 *identify either Yellowcake or Colonize in any way*” on the grounds that such
2 statement is conclusory. *Hansen*, 7 F.3d at 138.

3 **10. Declaration of Jose David Hernandez, ¶ 15, 4:7-15**

4 Hyphy objects to the statement from Hernandez that “[i]n fact, after I became
5 aware of the allegation that Yellowcake and Colonize had allegedly distributed
6 artwork through Daddy Kool Records, Colonize investigated the allegation. Not
7 only did I confirm that Colonize did not upload or distribute the Albums using
8 Hyphy’s artwork through Daddy Kool Records, it never distributed anything
9 through Daddy Kool Records at all. *Yellowcake also discovered that in fact it was*
10 *Hyphy Music, in corroboration with Morena Music, Inc. doing business as Long*
11 *Play Music, who uploaded the albums to Daddy Kool Records, through its*
12 *distributor, The Orchard, and is now attempting to pass off such acts as being*
13 *attributed to Yellowcake*” on the grounds that such statement is conclusory. *Hansen*,
14 7 F.3d at 138. Additionally, to the extent Hernandez gained knowledge of facts
15 purportedly underlying such assertion from others, such facts would also constitute
16 inadmissible hearsay. FRE 802.

17 **11. Declaration of Jose David Hernandez, ¶ 16, 4:16-17**

18 Hyphy objects to the statement from Hernandez that “Colonize discovered
19 that Daddy Kool Records received the Albums, with Hyphy’s artwork, from
20 Morena, through Hyphy and Morena’s distributor, The Orchard” on the grounds that
21 such statement is conclusory. *Hansen*, 7 F.3d at 138. Additionally, to the extent
22 Hernandez gained knowledge of facts purportedly underlying such assertion from
23 others, such facts would also constitute inadmissible hearsay. FRE 802.

24 **12. Declaration of Jose David Hernandez, ¶ 17, 4:18-24**

25 Hyphy objects to the statement from Hernandez that “[a]ttached hereto as
26 **Exhibit “A”** is an email chain between Colonize and one of Daddy Kool Records’
27 digital distributors, Audible Magic, who acknowledged that it had acquired the

1 Albums with Hyphy's artwork from The Orchard, who in turn received them from
2 Morena d/b/a Long Play Music, and uploaded the albums and artwork to Daddy
3 Kool Records. This is definitive and objective proof that it was not Yellowcake or
4 Colonize who gave the Albums to Daddy Kool Records, but in fact Morena who
5 provided the albums" on the grounds that such statement is conclusory. *Hansen*, 7
6 F.3d at 138. Additionally, to the extent Hernandez gained knowledge of facts
7 purportedly underlying such assertion from others, such facts would also constitute
8 inadmissible hearsay. FRE 802.

9 **13. Declaration of Jose David Hernandez, ¶ 18, 4:25-5:3**

10 Hyphy objects to the statement from Hernandez that "[f]urthermore, it is my
11 understanding that Hyphy did not produce these alleged screenshots of its album
12 artwork on Daddy Kool Records website until October 2022, almost two years after
13 the commencement of litigation and only on the eve of the first deadline to file
14 summary judgment motions. This supports the obvious inference that Hyphy
15 manufactured this 'evidence' which is consistent with Hyphy's prior actions of
16 manufacturing evidence such as the alleged assignment agreements from Chavez's
17 former backing musicians" on the grounds that such statement is conclusory.
18 *Hansen*, 7 F.3d at 138. Additionally, to the extent Hernandez gained knowledge of
19 facts purportedly underlying such assertion from others, such facts would also
20 constitute inadmissible hearsay. FRE 802.

21 **14. Declaration of Jose David Hernandez, ¶ 19, 5:4-10**

22 Hyphy objects to the statement from Hernandez that "[f]urthermore,
23 Colonize's attorneys advise me that Hyphy's screenshots are unsubstantiated and
24 lack a foundation. Hyphy has provided no evidence of who actually uploaded the
25 Albums to Daddy Kool Records or when they were uploaded, let alone any proof it
26 was Colonize or Yellowcake, because it was neither of them. Most tellingly, the
27 screenshots themselves make no mention of either Colonize or Yellowcake and that

Hyphy's attempt to use the screenshots as evidence of Colonize and Yellowcake's acts when they were uploaded by Morena, is a fraud on the Court" on the grounds that such statement is conclusory. *Hansen*, 7 F.3d at 138. Additionally, to the extent Hernandez gained knowledge of facts purportedly underlying such assertion from others, such facts would also constitute inadmissible hearsay. FRE 802.

15. Declaration of Jose David Hernandez, ¶ 20, 5:11-15

Hyphy objects to the statement from Hernandez that "[f]or all of the foregoing reasons, it is respectfully requested that this Court grant both Colonize's and Yellowcake's motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56 on Hyphy's second counterclaim for copyright infringement, as well as grant such other and further relief as the Court may deem just and proper" on the grounds that such statement is conclusory. *Hansen*, 7 F.3d at 138. Additionally, to the extent Hernandez gained knowledge of facts purportedly underlying such assertion from others, such facts would also constitute inadmissible hearsay. FRE 802.

DATED: August 15, 2023

ALTVIEW LAW GROUP, LLP

By:


JOHN M. BEGAKIS
Attorneys for Defendant/Counterclaimant
HYPHY MUSIC, INC., a California
corporation

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing electronically filed document has been served via a “Notice of Electronic Filing” automatically generated by the CM/ECF System and sent by e-mail to all attorneys in the case who are registered as CM/ECF users and have consented to electronic service pursuant to L.R. 5-3.3.

Dated: August 15, 2023

By: /s/ John Begakis
John M. Begakis